

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

_____)	
In the Matter of)	
)	WC Docket No. 03-109
Petitions Concerning Eligible)	
Telecommunications Carrier Designations and)	CC Docket No. 96-45
the Lifeline and Link-Up Universal Service)	
Support Mechanisms)	
_____)	

REPLY COMMENTS OF AT&T CORP.

AT&T Corp. (“AT&T”) respectfully submits this Reply to the Comments filed in response to AT&T's Petition for limited reconsideration of the Commission’s Lifeline and Link-Up Order.¹

In its Petition, AT&T sought to bifurcate the certification process so that a carrier may be certified as an Eligible Telecommunications Carrier (“ETC”) under Section 214(e) of the Act, 47 U.S.C. § 214(e), solely for the purpose of receiving Low Income Support on behalf of the Lifeline eligible customers it is already serving, without also having to seek qualification for receipt of High Cost Support. AT&T showed that it is in the public interest for federal Low Income Support to be made available to the broadest set of carriers so that those carriers have an incentive to market their Lifeline services to eligible customers, thereby increasing telephone subscribership among low income consumers and furthering the overriding goal of universal service. The current practice of ETC certification, under which there is a single certification, with

¹ *In the Matter of Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd. 8302 (2004) (“*Lifeline Order*”).

the same set of requirements, for both Low Income Support and High Cost Support, does not provide such an incentive.

As AT&T showed (Petition at 3-4, 6-8), in most states, competitive local exchange carriers (“CLECs”), like AT&T, are required by state law to provide Lifeline Service at below cost rates as a condition to local market entry. While the federal Lifeline/Link-Up program provides for Low Income support to compensate carriers and keep them whole, in implementing these programs, many states impose onerous conditions that should not be a prerequisite for eligibility for Low Income Support, but are relevant only to High Cost Support. Because there is currently a single certification for both, and compliance with state ETC requirements is often so costly that it provides a barrier to entry, AT&T (and other CLECs) often provide the required Lifeline service without applying for ETC certification because it is less expensive to absorb the loss on each Lifeline customer. This is harmful not only to local competition, but to the goal of increased subscribership because if a carrier is providing service at a loss to a class of customers there is a *disincentive* to market services to those customers.

AT&T showed (Petition at 4) that because it provides Lifeline customers with the same discounted service as incumbents provide to their Lifeline customers, Low Income Support, should be provided to AT&T and all carriers who meet the basic statutory requirements of Section 214(e) of the Act for ETC designation. Any additional state requirements that apply as a condition to receiving ETC designation should be relevant only to carriers seeking High Cost Support. AT&T urged the Commission to reconsider its *Lifeline Order*, and to the full extent of its authority, encourage or require state Commissions to certify *all* carriers who comply with Section 214(e) with respect to

Lifeline services as eligible to receive Low Income Support, regardless of whether they meet the requirements for High Cost Support.

The majority of commenting parties support the modest and sensible change urged by AT&T.² Significantly, low income consumers, the groups that represent them, and carriers who would like to serve them all agree that separate ETC designation for low income support raises no statutory concerns and is sound policy that will benefit low income consumers and further the goals of universal service.³ These consumers recognize that AT&T's proposal will promote competitive neutrality and fairly compensate CLECs for the cost of service that they provide at a discount to low income consumers.

Predictably, only the carriers who benefit from the competitive advantage they enjoy under the current system⁴ and some rural carriers, who raise parochial and unfounded concerns of supposed harm to the universal service fund ("USF") oppose any change.⁵ Relying on erroneous and contrived statutory and policy arguments, these incumbent carriers argue for maintaining the status quo, which unfairly and unnecessarily raises its competitors' costs and, even more importantly, deprives low income consumers of the benefits of vigorous competition for their business by non-incumbent carriers.

² A list of the Commenting parties with abbreviated references is included herein as Attachment 1.

³ See, e.g., AADP and SHHH, AFB, LULAC, The Women's Alliance, TDI, NRHA, NCAI, Telscape, TracFone.

⁴ See, e.g., Verizon, USTA.

⁵ See, e.g., NCTA, Oklahoma RTCs, TDS Telecom, RIITA.

Good law and public policy clearly militate for adoption of AT&T's proposal, which will benefit low income consumers and poses no threat to the universal service fund.

i. There Is No Statutory Bar To Bifurcating ETC Designation.

The incumbents and their industry organizations who argue for the status quo make the generalized, unfounded assertion that the Act prohibits separate designation as an ETC for the purpose of receiving low income support. In particular, they cite Sections 214(e) and 254(e) of the Act as supposedly barring the relief AT&T seeks. However, no party points to any provision in either section that supports their claim, and there is none.

Section 254(e) states that:

“After the date on which Commission regulations implementing this Section take effect, only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section.”

Not only does Section 254(e) not contain the prohibition that these parties assert, but it affirmatively recognizes that adoption of “regulations implementing this Section” is within the Commission’s discretion. All AT&T asks by its Petition is that the Commission exercise that discretion to make a procedural change in the certification process. The adoption of such a regulation or practice is clearly within the Commission’s authority. *See Section 254(e); see also* Section 154(i) of the Act, 47 U.S.C. § 154(i), granting the Commission general authority to “make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.”

Nor does Section 214(e) present any bar to separate ETC designation.

Section 214(e) provides, in pertinent part:

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS. – A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received –

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's service (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefore using media of general distribution.

Section 214(e)(2) grants state commissions authority to designate as an ETC a common carrier that meets the requirements of paragraph 1, and Section 214(e)(3) addresses designation of ETCs for unserved areas, which is not an issue here.

There is thus nothing in Section 214(e) that even addresses the issue of separate certification, much less any provision that prohibits it, as the ILECs claim. As noted above, the procedural details of implementing the certification process are left to the discretion of the Commission, which has long-since adopted rules addressing the certification process⁶ and has indisputable authority to modify those rules.⁷

ii. Sound Policy Considerations Favor Bifurcation Of ETC Designation.

Contrary to the claims of the incumbent carriers, policy considerations also strongly favor a dual ETC certification process. NTCA's purported concerns (at 4-5) over the sustainability of the USF if limited ETC status is granted for low income support

⁶ See Section 54.201 of the Commission's Rules, 47 C.F.R. § 54.201.

⁷ See Sections 254(e) and 154(i) of the Act, 47 U.S.C. §§ 254(e) and 154(i).

are parochial and unfounded. There can be no use of USF funds that is more clearly in the public interest and in furtherance of the goals of universal service than making support funds available to provide service to low income consumers who might otherwise not be able to afford telephone service at all. As TracFone points out (at 7), “Commission-compiled data demonstrate that the Federal Lifeline program remains significantly underutilized,” with a national participation rate of only 33.7 percent of eligible households, and with one state having a participation rate as low as 6.6 percent. A policy of separate certification can only serve to increase participation and thereby advance the goal of increasing low income subscribership, while having no negative impact on service in high cost areas.

Similarly, USTA’s claim (at 3-4) that AT&T’s proposal would allow CLECs to “cherry pick low cost Lifeline customers” makes no sense. As AT&T’s Petition (at 5-6) explained, the goal of Lifeline/Link-Up support is to reduce the price of local service for low income consumers, who may be rural or urban, high cost or low cost. Separate certification for Lifeline support will further this goal, regardless of whether service is provided in a high-cost or low-cost area. If AT&T is certified only for Lifeline support, it will continue to serve its non-Lifeline eligible customers even in high-cost areas, but it will not receive high cost support unless it is separately certified for that purpose. Nor is there any merit to USTA’s speculation (at 4) that separate Low Income ETC designation “might result in incentives for carriers to avoid providing Lifeline service while receiving high cost support.” It is simply not rational economic behavior for a carrier to decline to serve such customers when Low Income support will allow it to recover its costs of providing discounted service to those customers.

At bottom, the false premise of these arguments is that they would require a carrier to commit simultaneously to advancing *both* the goal of making service more affordable for low income consumers *and* the goal of serving customers in high cost areas and prohibit carriers from advancing one goal if they choose not to (or cannot economically) advance the other. There is, however, no reason to force such a choice because these two goals are advanced by separate programs and either can be advanced by itself without detriment to the other program. And that is precisely what AT&T's proposal would do.

NTCA (at 2-4), USTA (at 3-4) and Verizon (at 2-3) also claim that AT&T's proposal would somehow allow it to avoid the statutory obligations enumerated in Sections 254(e) and 214(e), including the obligation "to provide basic service to *all* customers" (Verizon at 3). This claim is simply wrong. AT&T's Petition (at 4) made clear that it seeks separate ETC certifications only for those carriers who, like AT&T, "comply with Section 214(e) with respect to Lifeline services eligible to receive Low Income Support." AT&T's Petition seeks no exemptions from any requirement of Sections 214(e) or 254(e), but simply separate designation as an ETC for Lifeline support for carriers who satisfy all applicable statutory requirements.⁸

And contrary to Verizon's assertion, AT&T will provide service to *all* customers in AT&T's service area, even if the customer happens to be located in a high cost area. What AT&T's Petition seeks, is the right to receive low income support for customers, regardless of whether it seeks high cost support. This request should be granted because the two mechanisms serve distinct and separate purposes; because it will

⁸ In the context of AT&T's Petition, the service supported by Federal Universal Support mechanisms is the Lifeline/Link-Up service itself.

advance the policy of universal service, and because there is nothing in the Act that prohibits the Commission from making this distinction in the ETC certification process.

Some parties (*e.g.*, Verizon at 3) oppose separate certification on grounds that it will supposedly result in “significant administrative burdens” and additional cost. This is a routine objection to any administrative change by those with a vested interest in maintaining the *status quo*. No party has even attempted to describe how separate certification would be more difficult than the current practice or to quantify the supposed additional cost. In all events, any presumed burden or cost would necessarily be modest, and a small price to pay for the added subscribership that will result if more carriers compete for the business of low income consumers, as they are likely to do.⁹

⁹ Likewise without merit is NASUCA’s argument (at 6) that the Commission should “open a rulemaking on the designation of low income ETCs.” This very proceeding is a rulemaking and the Commission has before it all the information necessary to decide this issue. Contrary to NASUCA’s claim (at 8) there are no “broad-ranging implications” that would warrant opening yet another “generic rulemaking proceeding,” and to do so would only result in unnecessary delay – which may well be the purpose of the proposal.

CONCLUSION

For the reasons stated above, the Commission should reconsider its *Lifeline Order* and streamline its rules for receiving federal Lifeline and Link-Up support as requested by AT&T.

Respectfully Submitted,

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American Foundation for the Blind (AFB)

League of United Latin American Citizens (LULAC)

National Association of State Utility Consumer Advocates (NASUCA)

National Congress of American Indians (NCAI)

National Rural Health Association (NRHA)

National Telecommunications Association (NTCA)

Oklahoma Rural Telephone Companies (Oklahoma RTCs)

Rural Iowa Independent Telephone Association (RIITA)

Telecommunications for the Deaf, Inc. (TDI)

TDS Telecommunications Corp. (TDS Telecom)

Telscape Communications, Inc. (Telscape)

Tracfone Wireless, Inc. (TracFone)

United States Telecommunications Association (USTA)

The Verizon Telephone Companies (Verizon)

The Women's Alliance

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October 2004, I caused true and correct copies of the foregoing Reply Comments of AT&T Corp. to be served on all parties by first class mail, postage prepaid to their addresses listed below.

/s/ Mart Vaarsi

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